ZAKARIA BIN HANAFI

v.

IBRAHIM BIN HANAFIAH & 12 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN HAJI MOHD NOOR BIN HAJI ABDULLAH J.
[CIVIL SUIT NO. 23-23-93]
29 JUNE 1994

LANDLORD & TENANT: Defendants' families cultivating padi land for generations - Rentals regularly paid to landlord - Plaintiff purchasing land - Plaintiff refusing to acknowledge defendants as tenants - Defendants given notice to quit and deliver vacant possession within 3 months - Defendants applying to the padi committee established under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 for order requiring plaintiff to execute a tenancy agreement - Whether there was a valid tenancy agreement between plaintiff's predecessor and defendants - Whether there was a similar tenancy agreement between the plaintiff and defendants - Whether the padi committee had jurisdiction to determine existence of a tenancy agreement - Whether the plaintiff purchased the land subject to defendants' right to occupy and cultivate the land - Whether plaintiff's 3 months notice of termination was effective to evict defendants from the land - Plaintiff obtaining order for temporary possession - Plaintiff developing and improving land - Whether the plaintiff should be ordered to deliver vacant possession of the land to defendants in its improved state of cultivation - Consideration of ss.2, 3, 4, 5, 7(1), 17(1) & 24 (1)(f) of the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967.

The defendants and their families had been cultivating a piece of land in Mukim Kangkong, Daerah Kota Setar for generations; paying rental after each harvest to the landlord. In 1989 the plaintiff bought the land and refused to accept rental from the defendants or acknowledge them as tenants. Instead he served them with notices to quit and deliver vacant possession within 3 months. The defendants applied to the relevant committee under s.7(1) of the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (the Act) for an order requiring the plaintiff to execute tenancy agreements with the defendants but the committee dismissed the application and ordered the defendants to vacate the land. The defendants' appeal to the padi tribunal was also unsuccessful. Thereafter the defendants applied to the High Court for an order of certiorari to quash the decision of the tribunal which was allowed. Meanwhile, the plaintiff had obtained an order for temporary possession of the land and proceeded to develop and improve the land.

In the present action, learned Counsel for the plaintiff submitted that there was no relationship of landlord and tenant between the parties. In his view there was in respect of padi land no tenancy agreement save a tenancy agreement under the Act which was required to be in writing and registered with the Registrar. He further submitted that even though the Court found that there was a tenancy agreement, the plaintiff had terminated the defendants' interest in the land by giving the defendants 3 months notice to quit and deliver vacant possession. Plaintiff's Counsel also enumerated the various problems the plaintiff would suffer if the plaintiff were orderd to deliver vacant possession in its improved state of cultivation. The Counsel for the defendants submitted that there was an oral agreement between the plaintiff's predecessor in title and the defendants and although not in writing nor registered the agreement was nevertheless a valid tenancy agreement. He submitted that the plaintiff bought the land with notice

that the defendants were in occupation and cultivating the land with the consent of the previous owner and accordingly the purchase was subject to the defendants' tenancy. Furthermore, defendants' Counsel argued that the plaintiff was only given temporary possession until the determination of the certiorari proceedings and was in contempt of Court for remaining in possession.

Held:

[1] There was a legally binding contract between the plaintiff's predecessor in title and the defendants which is governed by the law of contract. The Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 is a special law re-enacted to protect the tenants of padi land from unscrupulous landowners and therefore the requirements of written agreement and registration under the Act if not complied with would not make an otherwise valid contract void and of no effect. A contractual relationship of landlord and tenant under the law of contract can co-exist with a tenancy agreement under the Act.

[2] Whether a tenancy agreement ever existed in respect of padi land in contradiction with a tenancy agreement which was not renewed or registered usually involves serious questions of fact and law. Although s.17(1) of the Act confers wide powers on the committee to hear and determine any application under the Act including the power to hear and determine disputes between landlords and tenants arising out of their tenancy agreement and to make the necessary decisions or orders, such power relates to tenancy agreements within the ambit of the Act. The determination of whether a tenancy agreement ever existed can only be decided by a Court of competent jurisdiction.

[3] When the plaintiff entered into a sale and purchase agreement with the previous owner it was provided therein that he purchased the land free from encumbrances but he admitted under cross-examination that he visited the land before he purchased it and he knew there were people cultivating the land. The plaintiff therefore had notice of the defendants' interest in the land and he purchased the land subject to the defendants' tenancy.

[4] It was not ascertainable from the evidence the nature of the tenancy and how the tenancy could be terminated. There was insufficient evidence to suggest a yearly tenancy and a tenancy forever was unconscionable. The Court was not satisfied that 3 months notice was sufficient and proper to evict the defendants from the land and therefore ruled that the 3 months notice of termination and delivery of vacant possession was of no effect.

[5] The defendants were the lawful tenants of the plaintiff's predecessor in title and they continued to remain the tenants of the plaintiff. Therefore the order of vacant possession against the plaintiff must follow the event.

(Plaintiff's action dismissed with costs, defendants declared the lawful tenants of the plaintiff, the plaintiff to deliver vacant possession to the defendants within 3 months and the plaintiff to pay damages (to be assessed)).

Cases referred to:

Ibrahim Hanafiah & 12 Ors. v. Zakaria bin Hanafi [1991] 1 AMR 15 ***(refd)***
Ismail v. Haji Taib [1972] 1 MLJ 259 ***(foll)***

Legislation referred to:

Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, ss. 2, 3, 4, 5, 7(1), 17(1), 24(1)(f)

For the plaintiff - E. Mayandi; M/s. Mayandi & Panjaram
For the defendants - Ahmad Farid; M/s. Ahmad Farid & Associates

JUDGMENT

Haji Mohd Noor Bin Haji Abdullah J:

1. The facts of the case.

The subject matter of this action is a piece of land 93 relongs in area comprised in Geran No. 3786 Lot No. 1226 Mukim Kangkong Daerah Kota Setar which was owned by a certain Tengku Maheran of Kelantan and was managed by her kinsman Tengku Hisham and that land is now owned by the plaintiff since 1989. The defendants and/or their parents at various times developed/cultivated the land as padi land about 20 years ago and some as far back since the Japanese occupation. They paid rents regularly in arrears after each harvest to Tengku Hisham. When the plaintiff bought the land in 1989 the defendants tendered payments to the plaintiff but the plaintiff rejected them as he refused to acknowledge them as his tenants because when he made a search at the land registry there was no encumbrance attached to the land. The plaintiff thereupon served them with notices to quit and deliver vacant possession within 3 months. The defendants refused to deliver vacant possession and instead filed an application under s. 7(1) of the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (the Act) to the committee established thereunder for an order requiring the plaintiff landlord to execute tenancy agreements with the defendants. The committee dismissed the defendants' application and ordered them to vacate the land within 2 weeks. The defendants appealed to the padi Tribunal against that order. The Tribunal dismissed their appeal. Finally they applied for an order of *certiorari* to quash the decision of the Tribunal. Dato' K.C. Vohrah J. allowed the defendants' application. See *Ibrahim Hanafiah & 12 Ors. v. Zakaria bin Hanafi* [1991] 1 AMR 15 at 580, where the learned Judge held that the enquiry officer had no power to determine whether a tenancy agreement existed in respect of the said land which the learned Judge held was a matter for a competent Court of law to decide and as such the enquiry officer's decision was a nullity. The enquiry officer further made an order evicting the defendants from the land, an order which he had no power to make and hence a nullity. The learned Judge therefore held that the decision of the Tribunal which affirmed a null and void proceeding of the enquiry officer and his null and void order of eviction was a nullity.

2. Plaintiff in temporary possession.

In another related action the plaintiff had obtained an order of the Court for temporary possession of the land and since then the plaintiff had been in occupation of the land. The prelude to this order was that the defendants had for 2 seasons cultivated the land and at the end of each harvesting season the plaintiff obtained a Court order to seize the crops and distribute $^{1}/_{10}$ of the proceeds of sale to the defendants. The defendants were thereby deprived of and had no sufficient fund to further cultivate the land. The plaintiff moved in, quoting DW1, mighty and strong with machineries and imported labourers. The plaintiff developed and improved the land by making inundation canals and providing road access to facilitate the supply of fertilizer and retrieval of the harvest. He had spent much money and labour on the land.

3. Tenancy agreement.

The learned Counsel for the plaintiff submitted that there was no relationship of landlord and tenant between the plaintiff and the defendants nor was there any tenancy agreement between them. In his view there is in respect of padi land no tenancy agreement save a tenancy agreement under the Act which is one made in writing and

in the prescribed Form A (s. 3) and is registered with the Registrar (s. 4) the registration of which constitutes sufficient notice to any purchasers (s. 5). The oral agreement if any between the plaintiff's predecessor in title and the defendants counted for naught.

The learned Counsel for the defendants submitted that there was an oral tenancy agreement between the plaintiff's predecessor in title and the defendants and although such agreement was not in writing nor registered the agreement was nevertheless a valid tenancy agreement. In his view the tenancy agreement under the Act need not necessarily be in writing and be registered with the Registrar. He further submitted that the plaintiff bought the land from the previous owner in 1989 with notice that the defendants were in occupation of the land and were cultivating it with the permission of the previous owner. The plaintiff therefore bought the land subject to the defendants' right to remain in occupation of the land and cultivate it.

It was established as per facts enumerated above that there was an agreement between the plaintiff's predecessor in title and the defendants whereby the former allowed the latter to cultivate the padi land for a rental sum payable in arrears at the end of the harvesting season. It was proved that the defendants paid the rents regularly to Tengku Hisham. It was further proved that the defendants and/or their parents or some of them had cultivated the land since the Japanese occupation, some of them since 20 years ago and continued cultivating until 1989. From the above facts the elements necessary to constitute a legally binding contract existed namely the landowner agreed to let and the defendants agreed to take for the purpose of cultivating the land and the consideration being the rental sum payable at the end of the harvesting season.

In my view there was a legally binding contract between the plaintiff's predecessor in title and the defendants and such contract is governed by the law of contract. The Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 is a special law re-enacted to protect the tenants of padi land from unscrupulous landowners and therefore the requirements of written agreement and registration under the Act if not complied with would not make an otherwise valid legal contract illegal, void and of no effect. A contractual relationship of landlord and tenant under the law of contract can co-exist with a tenancy agreement under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967. A tenant whose tenancy agreement complies with the Act is protected under the provisions of the Act whereas a tenant whose tenancy agreement does not comply with the Act nevertheless is protected under the common law or the law of contract. I found support for this view from the judgement of Suffian FJ in *Ismail v Haji Taib* [1972] 1 MLJ 259. There the parties entered into a tenancy agreement in the prescribed form duly executed and registered under the Act. Thereafter there was no such agreement. Nevertheless the plaintiff continued to cultivate part of the land and to pay rent after each harvest to the defendant or to someone else on his behalf. At the beginning of 1966-67 season after the plaintiff had done some work on the land to prepare for the next planting he was turned out of the land by the defendant and thereafter the defendant himself planted the land. The plaintiff complained to the padi committee who on 30 July 1966 made an order requiring the defendant to execute a tenancy agreement with the plaintiff. The defendant failed to do so. Suffian FJ said "the definition of tenancy agreement in s. 2 of the Act does not say that it must be in writing so that in our judgment it could be oral. Though s. 5 says that there must be a memorandum in writing which must be deposited with the Registrar the Ordinance

does not however say that if there is no memorandum in writing or if there is a memorandum in writing but it has not been registered the tenancy is then illegal ... This means that the relationship between the parties was perfectly legal being governed solely by the law of contract." The learned Judge held that in the circumstances the plaintiff was a tenant of the defendant and a tenant for a year (considering that he paid rent by the year) and that the defendant was wrong in turning him out of the land.

Having ruled that there was a tenancy agreement between the plaintiff's predecessor in title and the defendants I proceeded to consider whether there was similarly a tenancy agreement between the plaintiff and the defendants.

The evidence disclosed that the plaintiff conducted a search at the local land registry before he purchased the land. His search revealed that there was no encumbrance on the land in particular the defendants' interest in the land. When the plaintiff entered into a sale and purchase agreement with the previous owner it was provided therein that he purchased the land free from any encumbrances, a sale described as "jual putus". However upon close scrutiny of his evidence he admitted under cross-examination that he visited the land before he purchased it and he knew that there were people cultivating the land. Tengku Hisham's representative also told him that many people were in occupation of the land and were cultivating it. Nevertheless the plaintiff purchased the land from the owner but he secured an undertaking that it was the owners responsibility to evict the tenants and deliver vacant possession to him. The plaintiff therefore had notice of the defendants' interest in the land as occupiers and cultivators of the land. Thus the plaintiff purchased the land subject to defendants' right to occupation and cultivation of the land.

4. Termination.

The plaintiff's Counsel further submitted that if the Court found that there was a tenancy agreement between the previous owner and the defendants and that the plaintiff had purchased the land subject to the defendants' interest in the land, the plaintiff had terminated the defendants' interest in the land by giving the defendants 3 months notice to quit and deliver vacant possession. The defendants' right was thereby extinguished.

According to PW1 the previous owner did not enter into a written agreement with the defendants because Tengku Hisham told them that the owner would not repossess the land and that they could continue to cultivate the land till the end of time. DW1 did not agree with the suggestion by the plaintiff's Counsel that the tenancy was from one season to another. I was not able to ascertain from the evidence the nature of the tenancy and how the tenancy could be terminated. There was insufficient evidence to suggest a yearly tenancy and a tenancy forever is unconscionable. I was not satisfied that 3 months notice was sufficient and proper to evict the defendants from the land. I tend to disagree with the submission by the defendants' Counsel that the tenancy could be terminated under s. 24(1)(f) of the Act by the plaintiff applying to the committee for the eviction of the defendants on the ground that the plaintiff desired to cultivate the land himself provided that the plaintiff shall have given one year's notice in writing to the defendants that he required the land for cultivation by himself. This relief was not available to the plaintiff as there was no tenancy agreement which complied with the Act. I ruled therefore that the 3 months notice of termination and delivery of vacant possession was of no effect.

5. Counter-claim for vacant possession.

The defendants in their counter-claim applied *inter alia* for a declaration that they were the lawful tenants of the plaintiff and consequent thereto the plaintiff be ordered to deliver vacant possession of the land to them.

The defendants had applied to the padi committee for an order requiring the plaintiff to execute a tenancy agreement. The committee dismissed the defendants' application. Dato' K.C. Vohrah J., commented in the case referred above as follows:

> While the enquiry officer could have proceeded with the enquiry on the date of hearing, as soon as the enquiry officer became aware that he had to decide whether a tenancy agreement ever existed in respect of the padi land, he should have stopped the proceedings because he had no power to determine that question. He had powers in relation to a tenancy agreement which was extant or which had expired. Nowhere in the Act is there a power given to the committee (or an enquiry officer) to determine whether a tenancy agreement ever existed in respect of the padi land. That is a matter for a competent Court of law to decide.

The issue whether a tenancy agreement ever existed in respect of padi land in contradiction with a tenancy agreement which was not renewed or registered usually involves serious questions both of facts and law such as equitable estoppel, latches, limitations, rejection or admissibility of evidence such as hearsay and secondary evidence. Although s. 17(1) of the Act confers wide powers on the committee to hear and determine any application under the Act including the power to hear and determine disputes between landlords and tenants arising out of their tenancy agreement and to make such decisions or order as may be necessary to give effect to the determination of any application or dispute, such power relates to tenancy agreements within the ambit of the Act and as such involves questions of fact and law in determining whether a tenancy agreement ever existed which can only be decided by a Court of competent jurisdiction. I had heard the evidence and decided that the defendants were the lawful tenants of the previous owner and that the plaintiff purchased the land from the previous owner subject to the tenancy.

I invited both Counsels to address me on the issue whether the plaintiff - who had expanded much money and labour on the land after he obtained temporary possession - should be ordered to deliver the land to the defendants in an improved state of cultivation with sufficient water, road access and drainage. The plaintiff's Counsel enumerated the various problems the plaintiff had to suffer if the plaintiff were ordered to re deliver vacant possession to the defendants. The defendants' Counsel submitted that the plaintiff was given temporary possession until the determination of the proceeding relating to *certiorari* but the plaintiff continued to be in possession of the land. This amounted to contempt of Court and the plaintiff should not be allowed to benefit from his wrong doing.

I had decided that the defendants were the lawful tenants of the plaintiff's predecessor in title and they continued to remain the tenants of the plaintiff. The order of vacant possession must follow the event. The order of the Court were as follows:

1. The plaintiff's action was dismissed with cost.
2. The defendants were declared the lawful tenants of the plaintiff.
3. The plaintiff was to deliver vacant possession to the defendants within 3 months.
4. Plaintiff was to pay damages (to be assessed) and cost to the defendants.